HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri H.L. Dattu, C.J.

Writ Petition No.964 of 1990

Petitioners

1. Haripriya Bai, wife of Late Bhuvneshwar Patel, aged 37 years,
2. Jogendra Patel, son of Late Bhuvneshwar Patel, aged about 16 years,
3. Ku. Amrika Patel, d/o Late Bhuvneshwar Patel, aged about 14 years,
4. Ku. Chandrakanta Patel, d/o Late Bhuvneshwar Patel, aged about 12 years,
5. Ku. Kuntala Patel, d/o Late Bhuvneshwar Patel, aged 10 years,
6. Pushar Kumar Patel, s/o Late Bhuvneshwar Patel, aged about 8 years,

All residents of village Pata, Tahsil Gharghoda, District Raigarh (MP)

versus

Respondents

1. Sub Divisional Officer (Revenue), Tah Gharghoda, District : Raigarh (M.P.)
2. Budhdhu (Minor), S/o Late Sidar, Caste : Agharia, Through : Natural Guardian, his mother, Smt. Ramwati, Wd/o Late Sidar, R/o Village : Tapranga, Tahsil : Gharghoda, District Raigarh (M.P.)

Petition under Articles 226 & 227 of the Constitution of India for writs in the nature of certiorari, mandamus, prohibition etc. and for appropriate further directions

Present : Shri Devendra Patel, counsel for the petitioners.
Shri G.D.Vaswani, Government Advocate for the State/respondent No.1.

ORAL ORDER

(Passed on 10th April, 2007)

The petitioners are legal representatives of the deceased petitioner Bhuvneshwar. They have been brought on record by order of this Court dated 11-12-1991. The deceased petitioner Bhuvneshwar was an agriculturist. He was a native of Village Tapranga, Tahsil Gharghoda, District Raigarh.

(2) The second respondent, who was minor at the time of filing of the writ petition, is represented through natural guardian his mother Smt. Ramwati.

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He, through his mother, had gone before the first respondent requesting him firstly to fix minimum wages under the provisions of the Minimum Wages Act, 1948 (henceforth 'the Act') and then direct the deceased petitioner to pay the minimum wages for the last 8½ years.

(3) The first respondent recorded the deposition of the deceased petitioner as well as the mother of the second respondent. In his evidence, the deceased petitioner has categorically stated that he owns agricultural land and the father of the second respondent, namely, Sidar was his 'Kamiya' (employee) and after death of Sidar, his minor son, i.e., the second respondent was his 'Kamiya' (employee). Nowhere in his evidence, the deceased petitioner has stated that he had employed the father of the second respondent and thereafter the second respondent as an agricultural labourer. In spite of this, the first respondent has come to the conclusion that the deceased petitioner had employed the father of the second respondent and thereafter the second respondent as an agricultural labourer and, therefore, the second respondent is entitled to minimum wages under the provisions of the Act and has directed the deceased petitioner to pay a sum of Rs.25,461=70 paise to the second respondent, by his impugned order dated 10-4-1989. Aggrieved by the said order passed by the first respondent, the petitioner is before me in this writ petition.

(4) Shri Devendra Patel, learned counsel appearing for the legal representatives of the deceased petitioner would submit that the father of the second respondent and thereafter the second respondent were working as household labourer with the deceased petitioner and, therefore, employment of the father of the second respondent and the second respondent is not covered under the provisions of the Act. Therefore, the learned counsel would further submit that the impugned order passed by the first respondent is without authority of law and without jurisdiction.

(5) Shri G.D.Vaswani, learned Government Advocate appearing for the State/respondent No.1 would submit that the father of the second respondent and thereafter the second respondent were working with the deceased petitioner as an agricultural labourer and, therefore, the first respondent had authority of law to pass the impugned order in exercise of his power under the provisions of the Act. In support of his submission, the learned Government Advocate has brought to my notice the notification issued by the State Government dated 24-11-1976.

(6) The question that falls for consideration of this Court is whether the father of the second respondent and thereafter the second respondent were working as agricultural labourer with the deceased petitioner and, therefore, the provisions of the Act would apply.

(7) In the impugned order passed, the first respondent, in number of places, has referred to the work that was entrusted to the father of the second respondent and the second respondent by the deceased petitioner. A conjoint reading of several paragraphs of the order passed by the first respondent would demonstrate that the father of the second respondent and thereafter the second respondent were working with the deceased petitioner only as household labourer.

(8) The next question that would arise for consideration of this Court is whether the provisions of the Act would apply to a person who was working as household labourer. For deciding this issue, the provisions of Section 2(g) read with Section 27 of the Act and the Schedule appended to the Act require to be noticed. Section 2(g) of the Act speaks of "scheduled employment", means an employment specified in the Schedule, or any process or branch of work forming part of such employment. Section 27 of the Act empowers the State Government to add to either part of the Schedule any employment in respect of which it is of opinion that minimum rate of the wages should be fixed under the Act.

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(9) A perusal of the Schedule to the Act would nowhere indicate that the employment in the form of household labourer would fall under the said Schedule. Since the employment of the father of the second respondent and the second respondent is not covered under the Schedule, the first respondent had no authority of law or jurisdiction to pass the impugned order granting relief to the second respondent by directing the deceased petitioner to pay a minimum wage for a period of 8½ years in a sum of Rs.25,461=70 paise.

(10) In view of the above discussion, in my opinion, the order passed by the first respondent requires to be annulled. Accordingly, the following

ORDER

(i) The writ petition is allowed.

(ii) The order passed by the Sub-Divisional Officer (Revenue) dated 10-4-1989 is set aside.

(iii) In the facts and circumstances of the case, the parties are directed to bear their own costs in this petition.

(iv) Ordered accordingly.

Sd/-
Chief Justice